

Appeal from decision of the New Mexico State Office, Bureau of Land Management, declaring appellant's unpatented placer mining claims null and void ab initio. NMMC 125519 through NMMC 125523.

Affirmed.

1. Mining Claims: Withdrawn Land--Withdrawals and Reservations:
Generally--Withdrawals and Reservations: Effect of

Publication of the notice of a withdrawal application in the Federal Register segregates the lands described in the application from settlement, sale, location or entry under the general land laws, including the mining laws, to the extent specified in the notice.

2. Mining Claims: Withdrawn Land--Withdrawals and Reservations:
Generally--Withdrawals and Reservations: Effect of

A placer claim located on land segregated and closed to mineral entry by publication of notice of an application for withdrawal of the land in the Federal Register is properly declared null and void ab initio.

3. Mining Claims: Generally--Mining Claims: Location-- Mining
Claims: Withdrawn Land

In the absence of specific evidence that a mining claim location notice dated subsequent to the date of withdrawal of the land upon which the claim was located was intended to be an amendment, rather than a relocation, of a claim located prior to the withdrawal, a mining claimant cannot relate the date of a location to an earlier location and thus validate a claim which would otherwise be considered null and void ab initio.

APPEARANCES: John C. Neill, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

John C. Neill has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), declaring appellant's unpatented

placer mining claims null and void ab initio because the lands upon which the claims were located had been withdrawn from entry under the public land laws including the general mining laws.

The record discloses that on May 27, 1983, appellant filed notices of location with the New Mexico State Office, BLM, in compliance with the provisions of 43 U.S.C. § 1744(b) (1976). Section 1744(b) provides, in pertinent part, that "[t]he owner of an unpatented lode or placer mining claim * * * located after October 21, 1976 shall, within ninety days after the date of location of such claim, file in the office of the [BLM] designated by the Secretary a copy of the official record of the notice of location * * *." The notices of location filed by appellant included notices of location of claims located in sec. 25, T. 21 S., R. 2 E., New Mexico principal meridian. 1/

[1] The BLM decision on appeal noted that the Bureau of Reclamation had applied for the withdrawal of the lands in sec. 25, T. 21 S., R. 2 E., New Mexico principal meridian, on May 18, 1983 (application NM 56990), and that BLM had caused a notice of the withdrawal application to be published in the Federal Register on May 26, 1983. Publication of the notice of a withdrawal application in the Federal Register segregates the lands described in the application from settlement, sale, location or entry under the public land laws, including the mining laws, to the extent specified in the notice. 43 CFR 3210.2. The notice, as printed in the Federal Register, stated in part: "Effective on the date of publication of this notice, the above-described lands shall be segregated from operation of the public lands laws, including the mining laws * * *." 48 FR 23715 (May 26, 1983). Thus the public lands described in the notice became segregated from entry under the general mining laws on May 26, 1983.

[2] Under the laws of New Mexico, the date of location of a mining claim is the date of posting written notice of the location on the ground. N.M. Stat. Ann. § 69-3-1.c (1981). Appellant's notices of location state that his placer mining claims were located on the ground on May 26, 1983. As is indicated above, the lands upon which appellant located his claims were closed to entry under the mining laws on May 26, 1983. Thus, BLM properly declared his claims to be null and void ab initio. See, e.g., Philip A. Cramer, 74 IBLA 1 (1983); Grace P. Crocker, 73 IBLA 78 (1983).

[3] Appellant suggests in his statement of reasons that the location of his mining claims can be related to a date preceding the date of publication of the notice of the proposed withdrawal in the Federal Register. Appellant's statement of reasons states, in part:

(4) Said land and other land surrounding it had originally been claimed, and unpatented plats or mining claims perfected of record on March 1, 1983 with the Eddy County Clerk's office, in

1/ More particularly, the claims are described in the location notices as follows:

<u>Claim Name</u>	<u>Location in sec. 25</u>	<u>BLM No.</u>
Carbonate #1	S 1/2 SE 1/4 SE 1/4	NMMC 0125519
Carbonate #2	N 1/2 SE 1/4 NE 1/4	NMMC 0125520
Carbonate #3	N 1/2 NE 1/4 SE 1/4	NMMC 0125521
Carbonate #4	S 1/2 NE 1/4 SE 1/4	NMMC 0125522
Carbonate #5	S 1/2 NE 1/4 NE 1/4	NMMC 0125523

Miscellaneous Book 220, Pages 1115 through 1119, in favor of NIL Land and Cattle Company, Numbers 1 through 5. Said claims were superceded [sic] by the appellant's claim of May 26, 1983. In light of this continuing perfection from March 1, 1983 forward, the subsequent withdrawal of lands constitutes a deprivation of property without due process of law in violation of the United States Constitution.

On November 28, 1983, an order was issued by this Board giving appellant 30 days to file evidence in support of this allegation. 2/ This order stated in part:

However, appellant has submitted no evidence in support of the location of the above-noted claims, continuity of title or privity between appellant and NIL Land and Cattle Company. Without this evidence, the contention must be construed as being unsupported. Therefore, appellant is afforded 30 days from the date of receipt of this order to submit evidence in support of the above allegation. In the event that said evidence is not submitted in the time allotted, this Board will base its determination on the record as it now stands.

Appellant has submitted no further evidence in response to this order. There is nothing in the record to demonstrate that the claims referred to in appellant's fourth allegation are actually the same claims now before this Board or that there is privity between the appellant and NIL Land and Cattle Company. This being the case, the allegation that appellant's locations can be related to earlier locations by the NIL Land and Cattle Company is without merit. 3/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Franklin D. Arness
Administrative Judge

2/ No return receipt was received for the first copy of the order sent to appellant. A second copy of the order was mailed to appellant and received on Jan. 30, 1984, and the reply was considered due on or before Mar. 2, 1984.

3/ Cf., e.g., R. Gale Tibbetts, 43 IBLA 210, 86 I.D. 538 (1979), which ruled that an "amended location" as distinct from a "relocation" can be related back to the original date of location.

